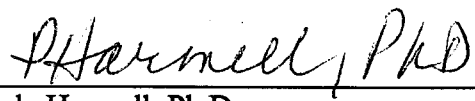


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2
3 **DECISION AND ORDER**
4 **OF THE**
5 **BOARD OF PSYCHOLOGY**

6
7 **DEPARTMENT OF CONSUMER AFFAIRS**

8
9 The attached Stipulated Settlement and Disciplinary Order in case number W231, is
10 hereby adopted as the Decision and Order of the Board of Psychology, Department of Consumer
11 Affairs. An effective date of March 12, 2003 has been assigned to this
12 Decision and Order.

13
14 Made this 10th day of February, 2003.

15
16 
17 _____
18 Pamela Harmell, Ph.D.
19 President, Board of Psychology
20 Department of Consumer Affairs
21
22
23
24
25

1 BILL LOCKYER, Attorney General
of the State of California
2 GAIL M. HEPPELL, Supervising Deputy
Attorney General, State Bar No. 84134
3 DANIEL J. TURNER, State Bar No. 79560
Deputy Attorney General
4 California Department of Justice
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-7861
Facsimile: (916) 327-2247
7

8 Attorneys for Complainant
9

10 BEFORE THE
BOARD OF PSYCHOLOGY
DEPARTMENT OF CONSUMER AFFAIRS
11 STATE OF CALIFORNIA

12 In the Matter of the First Amended Accusation
13 Against:

14 ARLENE SONDR A GIORDANO
137 S. Shepherd Street
Sonoma, California 95370
15

16 Psychologist License No. PSY9078
17

Respondent.

Case No. W231
OAH No. N-20020-70068

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceedings that the following matters are true:
20

21 PARTIES

22 1. Thomas S. O'Connor ("Complainant") is the Executive Officer of the
23 Board of Psychology ("Board"). He brought this action solely in his official capacity and is
24 represented in this matter by Bill Lockyer, Attorney General of the State of California, by Daniel
25 J. Turner, Deputy Attorney General.

26 2. Respondent ARLENE SONDR A GIORDANO ("Respondent") is
27 represented in this proceeding by the law firm of Nossaman, Guthrie Knox & Elliott, LLP,
28 Matthew Cheever, whose address is 915 L Street, Suite 1000, Sacramento, CA 95814-3701.

1 3. On or about July 29, 1985, the Board issued Psychologist License
2 No. PSY9078 to Respondent. The License was in full force and effect at all times relevant to the
3 charges brought in the First Amended Accusation No. W231 and will expire on May 31, 2003,
4 unless renewed.

5 JURISDICTION

6 4. The First Amended Accusation No. W231 was filed before the Board,
7 Department of Consumer Affairs, and is currently pending against Respondent. The First
8 Amended Accusation and all other statutorily required documents were properly served on
9 Respondent on December 5, 2002. Respondent timely filed her Notice of Defense contesting the
10 First Amended Accusation. A copy of the First Amended Accusation W231 is attached hereto as
11 Exhibit A and incorporated herein by reference.

12 ADVISEMENT AND WAIVERS

13 5. Respondent has carefully read, fully discussed with counsel, and
14 understands the charges and allegations in the First Amended Accusation No. W231. Respondent
15 has also carefully read, fully discussed with counsel, and understands the effects of this
16 Stipulated Settlement and Disciplinary Order.

17 6. Respondent is fully aware of her legal rights in this matter, including the
18 right to a hearing on the charges and allegations in the First Amended Accusation; the right to be
19 represented by counsel at her own expense; the right to confront and cross-examine the witnesses
20 against her; the right to present evidence and to testify on her own behalf; the right to the
21 issuance of subpoenas to compel the attendance of witnesses and the production of documents;
22 the right to reconsideration and court review of an adverse decision; and all other rights accorded
23 by the California Administrative Procedure Act and other applicable laws.

24 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
25 each and every right set forth above.

26 CULPABILITY

27 8. Respondent admits the truth of the Sixth Cause for Discipline in the First
28 Amended Accusation No. W231, including that she is guilty of unprofessional conduct within

1 the meaning of Business and Professions Code section 2960, subdivisions (i) and (k), and section
2 2936, in that prior to Respondent preparing the custody evaluation report to the court dated
3 August 14, 1999, Respondent failed to clarify to B.H. the extent to which confidentiality could be
4 compromised if Respondent was to assume the dual role of therapist and evaluator for the court,
5 and how the role of therapist would change if Respondent took on the role of evaluator for the
6 court.

7 9. Respondent agrees that her Psychologist License is subject to discipline
8 and she agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary
9 Order below.

10 CIRCUMSTANCES IN MITIGATION

11 10. Respondent ARLENE SONDR A GIORDANO has never been the subject
12 of any disciplinary action. She is admitting responsibility at an early stage in the proceedings.

13 RESERVATION

14 11. The admissions made by Respondent herein are only for the purposes of
15 this proceeding, or any other proceedings in which the Board or other professional licensing
16 agency is involved, and shall not be admissible in any other criminal or civil proceeding.

17 CONTINGENCY

18 12. This stipulation shall be subject to approval by the Board. Respondent
19 understands and agrees that counsel for Complainant and the staff of the Board may
20 communicate directly with the Board regarding this stipulation and settlement, without notice to
21 or participation by Respondent or her counsel. By signing the stipulation, Respondent
22 understands and agrees that she may not withdraw her agreement or seek to rescind the
23 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
24 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
25 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
26 the parties, and the Board shall not be disqualified from further action by having considered this
27 matter.

28 ///

1 13. The parties understand and agree that facsimile copies of this Stipulated
2 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
3 force and effect as the originals.

4 14. In consideration of the foregoing admissions and stipulations, the parties
5 agree that the Board may, without further notice or formal proceeding, issue and enter the
6 following Disciplinary Order:

7 DISCIPLINARY ORDER

8 IT IS HEREBY ORDERED that Psychologist License No. PSY9078 issued to
9 Respondent ARLENE SONDR A GIORDANO is revoked. However, the revocation is stayed
10 and Respondent is placed on probation for three (3) years on the following terms and conditions.

11 1. PRACTICE MONITOR Within 90 days of the effective date of this
12 Decision, Respondent shall submit to the Board or its designee for prior approval, the name and
13 qualifications of a psychologist who has agreed to serve as a practice monitor/billing monitor.
14 The monitor shall (1) be a California-licensed psychologist with a clear and current license;
15 (2) have no prior business, professional, personal or other relationship with Respondent; and
16 (3) not be the same person as Respondent's therapist. The monitor's education and experience
17 shall be in the same field of practice as that of Respondent.

18 Once approved, the monitor shall submit to the Board or its designee a plan by
19 which Respondent's practice shall be monitored. Monitoring shall consist of at least one hour per
20 month of individual face-to-face meetings and shall continue during the first two years of the
21 probationary period. Respondent shall provide the monitor with a copy of this Decision and
22 access to Respondent's fiscal and/or patient records. Respondent shall obtain any necessary
23 patient releases to enable the monitor to review records and to make direct contact with patients.
24 Respondent shall execute a release authorizing the monitor to divulge any information that the
25 Board may request. It shall be Respondent's responsibility to assure that the monitor submits
26 written reports to the Board or its designee on a quarterly basis verifying that monitoring has
27 taken place and providing an evaluation of Respondent's performance.

28 ///

Respondent shall notify all current and potential patients of any term or condition of probation which will affect their therapy or the confidentiality of their records (such as this condition which requires a practice monitor/billing monitor). Such notifications shall be signed by each patient prior to continuing or commencing treatment.

If the monitor quits or is otherwise no longer available, Respondent shall obtain approval from the Board for a new monitor within 30 days. If no new monitor is approved within 30 days, Respondent shall not practice until a new monitor has been approved by the Board or its designee. During this period of non-practice, probation will be tolled and any period of non-practice shall not apply to the reduction of this probationary period. Respondent shall pay all costs associated with this monitoring requirement. Failure to pay these costs shall be considered a violation of probation.

2. COURSEWORK Respondent shall take and successfully complete not less than 12 hours of coursework for each year of probation in the following areas: confidentiality, dual relationships and child custody matters. Coursework must be preapproved by the Board or its designee. All coursework shall be taken at the graduate level at an accredited educational institution or by an approved continuing education provider. The coursework must be in addition to any continuing education courses that may be required for license renewal.

Within 90 days of the effective date of this Decision, Respondent shall submit to the Board or its designee for its prior approval a plan for meeting the educational requirements. All costs of the coursework shall be paid by Respondent.

3. ETHICS COURSE Within 90 days of the effective date of this Decision, Respondent shall submit to the Board or its designee, for prior approval, a course in laws and ethics as they relate to the practice of psychology. Said course must be successfully completed at an accredited educational institution or through a provider approved by the Board's accreditation agency for continuing education credit. Said course must be taken and completed within one year from the effective date of this Decision. The cost associated with the law and ethics course shall be paid by Respondent.

///

1 4. INVESTIGATION/ENFORCEMENT COST RECOVERY Respondent
2 shall pay the Board its costs of investigation and enforcement in the amount of \$5,000.
3 Respondent shall pay the above \$5,000.00 in full before the 31st month of probation. Such costs
4 shall be payable to the Board of Psychology. Failure to pay such costs shall be considered a
5 violation of probation. Respondent shall not petition for early termination of probation until the
6 above \$5,000.00 has been paid in full.

7 The filing of bankruptcy by Respondent shall not relieve Respondent of the
8 responsibility to repay investigation and enforcement costs

9 5. PROBATION COSTS Respondent shall pay the costs associated with
10 probation monitoring each and every year of probation. Such costs shall be payable to the Board
11 of Psychology at the end of each fiscal year (July 1 - June 30). Failure to pay such costs shall be
12 considered a violation of probation.

13 The filing of bankruptcy by respondent shall not relieve Respondent of the
14 responsibility to repay investigation and enforcement costs

15 6. OBEY ALL LAWS Respondent shall obey all federal, state, and local
16 laws and all regulations governing the practice of psychology in California, including the ethical
17 guidelines of the American Psychological Association. A full and detailed account of any and all
18 violations of law shall be reported by Respondent to the Board or its designee in writing within
19 72 (seventy-two) hours of occurrence.

20 7. QUARTERLY REPORTS Respondent shall submit quarterly
21 declarations under penalty of perjury on forms provided by the Board or its designee, stating
22 whether there has been compliance with all the conditions of probation.

23 8. PROBATION COMPLIANCE Respondent shall comply with the Board's
24 probation program and shall, upon reasonable notice, report to the assigned District Office of the
25 Medical Board of California or other designated probation monitor. Respondent shall contact the
26 assigned probation officer regarding any questions specific to the probation order. Respondent
27 shall not have any unsolicited or unapproved contact with (1) complainants associated with the
28 case; (2) Board members or members of its staff; or (3) persons serving the Board as expert

1 evaluators

2 9. INTERVIEW WITH BOARD OR ITS DESIGNEE Respondent shall
3 appear in person for interviews with the Board or its designee upon request at various intervals
4 and with reasonable notice

5 10. CHANGES OF EMPLOYMENT Respondent shall notify the Board in
6 writing, through the assigned probation officer, of any and all changes of employment, location,
7 and address within 30 days of such change.

8 11. TOLLING FOR OUT-OF-STATE PRACTICE, RESIDENCE OR IN-
9 STATE NON-PRACTICE In the event Respondent should leave California to reside or to
10 practice outside the State, or for any reason Respondent should stop practicing psychology in
11 California, Respondent shall notify the Board or its designee in writing within ten (10) days of
12 the dates of departure and return or the dates of non-practice within California. Non-practice is
13 defined as any period of time exceeding 30 days in which Respondent is not engaging in any
14 activities defined in Sections 2902 and 2903 of the Business and Professions Code. Periods of
15 temporary or permanent residency or practice outside California or of non-practice within
16 California will not apply to the reduction of this probationary period, although the Board may
17 allow Respondent to complete certain terms of probation that are not associated with active
18 practice.

19 12. EMPLOYMENT AND SUPERVISION OF TRAINEES If Respondent is
20 licensed as a psychologist, she shall not employ or supervise or apply to employ or supervise
21 psychological assistants, interns or trainees during the course of this probation. Any such
22 supervisory relationship in existence on the effective date of this probation shall be terminated
23 by Respondent and/or the Board.

24 13. FUTURE REGISTRATION OR LICENSURE If Respondent is currently
25 registered as a psychological assistant and subsequently obtains other psychological assistant
26 registrations or becomes licensed as a psychologist during the course of this probationary order,
27 Respondent agrees that this Decision shall remain in full force and effect until the probationary
28 period is successfully terminated. Future registration or licensure shall not be approved.

1 however, until Respondent is currently in compliance with all of the terms and conditions of
2 probation.

3 14. VIOLATION OF PROBATION If Respondent violates probation in any
4 respect, the Board may, after giving Respondent notice and the opportunity to be heard, revoke
5 probation and carry out the disciplinary order that was stayed. If an Accusation or Petition to
6 Revoke Probation is filed against Respondent during probation, the Board shall have continuing
7 jurisdiction until the matter is final, and the period of probation shall be extended until the matter
8 is final. No Petition for Modification or Termination of Probation shall be considered while
9 there is an Accusation or Petition to Revoke Probation pending against Respondent.

10 15. COMPLETION OF PROBATION Upon successful completion of
11 probation, Respondent's license shall be fully restored.

12
13 ACCEPTANCE

14 I have carefully read the above Stipulated Settlement and Disciplinary Order and
15 have fully discussed it with my attorney, Matthew Cheever of Nossaman, Guthner, Knox &
16 Elliott. I understand the stipulation and the effect it will have on my Psychologist License. I
17 enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and
18 intelligently, and agree to be bound by the Decision and Order of the Board of Psychology.

19
20 DATED: 12-18-02

21
22 
23 ARLENE SONDRA GIORDANO
Respondent

24 ///

25 ///

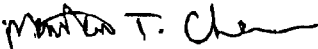
26 ///

27 ///

28 ///

1 I have read and fully discussed with Respondent ARLENE SONDR
2 GIORDANO the terms and conditions and other matters contained in the above Stipulated
3 Settlement and Disciplinary Order. I approve its form and content.

4
5 DATED: 12/18/02

6
7 
8 NOSSAMAN, GUTHNER, KNOX & ELLIOTT,
9 Matthew Cheever
Attorneys for Respondent

10 ENDORSEMENT

11 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
12 submitted for consideration by the Board of Psychology of the Department of Consumer Affairs.

13
14 DATED: 1-3-2003

15
16 BILL LOCKYER, Attorney General
17 of the State of California

18 
19 DANIEL J. TURNER
20 Deputy Attorney General

21 Attorneys for Complainant
22
23
24
25
26
27
28

EXHIBIT A

1 BILL LOCKYER, Attorney General
of the State of California
2 GAIL M. HEPPELL, Supervising Deputy
Attorney General, State Bar No. 84134
3 DANIEL J. TURNER, State Bar No. 79560
Deputy Attorney General
4 California Department of Justice
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-7861
Facsimile: (916) 327-2247

7 Attorneys for Complainant

FILED
STATE OF CALIFORNIA
BOARD OF PSYCHOLOGY
SACRAMENTO December 5 2002
BY *M. Jackman* ANALYST

10 **BEFORE THE**
BOARD OF PSYCHOLOGY
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. W231

13 **ARLENE SONDR A GIORDANO, Ph.D.**
14 137 South Shepherd Street
Sonora, California 95370

FIRST AMENDED
ACCUSATION

15 Psychologist License No. PSY9078

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20
21 1. Thomas S. O'Connor (Complainant) brings this Accusation solely in his
22 official capacity as the Executive Officer of the Board of Psychology, Department of Consumer
23 Affairs.

24 2. On or about July 29, 1985, the Board of Psychology issued Psychologist
25 License Number PSY9078 to ARLENE SONDR A GIORDANO (Respondent). The Psychologist
26 License was in full force and effect at all times relevant to the charges brought herein and will expire
27 on May 31, 2003, unless renewed.

28 ///

JURISDICTION

3. This Accusation is brought before the Board of Psychology ("Board"), under the authority of the following sections of the Business and Professions Code ("Code").

4. Section 2960 of the Code states:

The board may refuse to issue any registration or license, or may issue a registration or license with terms and conditions, or may suspend or revoke the registration or license of any registrant or licensee if the applicant, registrant, or licensee has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

(a) Conviction of a crime substantially related to the qualifications, functions or duties of a psychologist or psychological assistant.

(b) Use of any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug, or any alcoholic beverage to an extent or in a manner dangerous to himself or herself, any other person, or the public, or to an extent that this use impairs his or her ability to perform the work of a psychologist with safety to the public.

(c) Fraudulently or neglectfully misrepresenting the type or status of license or registration actually held.

(d) Impersonating another person holding a psychology license or allowing another person to use his or her license or registration.

(e) Using fraud or deception in applying for a license or registration or in passing the examination provided for in this chapter.

(f) Paying, or offering to pay, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of clients.

(g) Violating Section 17500.

(h) Willful, unauthorized communication of information received in professional confidence.

(i) Violating any rule of professional conduct promulgated by the board and set forth in regulations duly adopted under this chapter.

(j) Being grossly negligent in the practice of his or her profession.

(k) Violating any of the provisions of this chapter or regulations duly adopted thereunder.

(l) The aiding or abetting of any person to engage in the unlawful practice of psychology.

(m) The suspension, revocation or imposition of probationary conditions by another state or country of a license or certificate to

practice psychology or as a psychological assistant issued by that state or country to a person also holding a license or registration issued under this chapter if the act for which the disciplinary action was taken constitutes a violation of this section.

(n) The commission of any dishonest, corrupt, or fraudulent act.

(o) Any act of sexual abuse, or sexual relations with a patient or former patient within two years following termination of therapy, or sexual misconduct that is substantially related to the qualifications, functions or duties of a psychologist or psychological assistant or registered psychologist.

(p) Functioning outside of his or her particular field or fields of competence as established by his or her education, training, and experience.

(q) Willful failure to submit, on behalf of an applicant for licensure, verification of supervised experience to the board.

(r) Repeated acts of negligence.

5. Section 2936 of the Code provides, in pertinent part, that the Board shall apply the American Psychological Association's ("APA") Code of Ethics as its standard of ethical conduct relating to the practice of psychology.

6. Section 2964.6 of the Code states:

An administrative disciplinary decision that imposes terms of probation may include, among other things, a requirement that the licensee who is being placed on probation pay the monetary costs associated with monitoring the probation.

7. Section 125.3 of the Code states:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, the board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and

1 enforcement costs up to the date of the hearing, including, but not
2 limited to, charges imposed by the Attorney General.

3 (d) The administrative law judge shall make a proposed finding of
4 the amount of reasonable costs of investigation and prosecution of the
5 case when requested pursuant to subdivision (a). The finding of the
6 administrative law judge with regard to costs shall not be reviewable
7 by the board to increase the cost award. The board may reduce or
8 eliminate the cost award, or remand to the administrative law judge
9 where the proposed decision fails to make a finding on costs
10 requested pursuant to subdivision (a).

11 (e) Where an order for recovery of costs is made and timely payment
12 is not made as directed in the board's decision, the board may enforce
13 the order for repayment in any appropriate court. This right of
14 enforcement shall be in addition to any other rights the board may
15 have as to any licentiate to pay costs.

16 (f) In any action for recovery of costs, proof of the board's decision
17 shall be conclusive proof of the validity of the order of payment and
18 the terms for payment.

19 (g) (1) Except as provided in paragraph (2), the board shall not
20 renew or reinstate the license of any licentiate who has failed to pay
21 all of the costs ordered under this section.

22 (2) Notwithstanding paragraph (1), the board may, in its
23 discretion, conditionally renew or reinstate for a maximum of one
24 year the license of any licentiate who demonstrates financial hardship
25 and who enters into a formal agreement with the board to reimburse
26 the board within that one-year period for the unpaid costs.

27 (h) All costs recovered under this section shall be considered a
28 reimbursement for costs incurred and shall be deposited in the fund
of the board recovering the costs to be available upon appropriation
by the Legislature.

(i) Nothing in this section shall preclude a board from including the
recovery of the costs of investigation and enforcement of a case in
any stipulated settlement.

(j) This section does not apply to any board if a specific statutory
provision in that board's licensing act provides for recovery of costs
in an administrative disciplinary proceeding.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

[Bus. & Prof. Code § 2960(j)]

8. Respondent is subject to disciplinary action under section 2960(j) of the Code
in that she was grossly negligent in disclosing confidential information of patient B.H. without the
patient's written consent. The circumstances are as follows:

1 9. On or about May 1998, B. H. took her son R. to see Respondent concerning
2 her son's reactions to visits with his father R.H. (B.H. and R.H. had recently divorced and B.H. was
3 recognized as the primary custodial parent.) In August 1998, R.H., upon his request, was included
4 in the therapy sessions with his ex-wife and son. In September 1998, B.H.'s attorney, Karen
5 Armstrong-Dixon, and R.H.'s attorney, Hal Channell, in a letter written by Ms. Armstrong-Dixon,
6 requested that Respondent provide Tuolumne County Superior Court with a recommendation
7 whether the court order concerning child visitation should remain in effect or be modified, and
8 whether the father's conduct during visitation should be modified. Respondent provided B.H. with
9 psychological testing. In a letter dated December 2, 1998, Respondent wrote to and provided the
10 court with a recommendation concerning R.'s visitation with his father. B.H. continued as the
11 primary custodial parent of R.

12 10. Respondent's last therapy session with B.H. was on or about October 27,
13 1998. Respondent did not see B.H. or R. during 1999, with the exception of one session with R. in
14 September 1999. Respondent continued to see R.H. for several sessions in 1999. In 1999, R.H. and
15 his attorney, Hal Channell, requested that Respondent provide Tuolumne County Superior Court
16 with a written recommendation for custody of R. Respondent wrote two letters to the court in
17 response to the request. In one of the letters, consisting of one page and undated, Respondent
18 recommended that B.H.'s intended move out of the area be considered by the court as detrimental
19 to the child's best interest. Respondent ends the letter indicating that she would later send the court
20 a full report of her findings gathered during evaluation and treatment.

21 11. In a written 13-page child custody evaluation dated August 14, 1999, to
22 Tuolumne County Superior Court, Respondent discloses confidential information of patient B.H.
23 without written or oral consent from the patient B.H.. Prior to this written evaluation to the court,
24 B.H. had moved out of the area in Sonora, California to Modesto, California. In her evaluation to
25 the court, Respondent recommended: a change in physical custody from the mother, B.H. to the
26 father, R.H., the sanctioning of B.H. for having broken her earlier custody agreement not to move
27 out of the area, requiring B.H. to return to the Sonora, California area, and continued court ordered
28 family therapy. The evaluation Respondent submitted to the court was based on confidential

1 information Respondent gathered from B.H. during 1998, and on information gathered from R.H.
2 in 1998 and 1999. Other information upon which the report was base was gathered during therapy
3 sessions with the minor R. in 1998 and one session in September 1999.

4 12. Neither B.H. nor her attorney requested or authorized the 13-page custody
5 evaluation report Respondent prepared and sent to the court dated August 14, 1999. The court also
6 did not order an evaluation report from Respondent.

7 13. Prior to Respondent preparing the custody evaluation report to the court dated
8 August 14, 1999, Respondent failed to clarify to B.H. the extent to which confidentiality could be
9 compromised if Respondent was to assume the dual role of therapist and evaluator for the court and
10 how the role of therapist would change if Respondent took on the role of evaluator for the court.

11 14. The Ethical Principles of Psychologists and the Code of Conduct promulgated
12 by the American Psychological Association provides, in part, the following:

13 5.05 Disclosures -- (a) Psychologists disclose confidential
14 information without the consent on the individual only as mandated
by law, or where permitted by law for a valid purpose,

15 (b) Psychologists also may disclose confidential information with the
16 appropriate consent of the patient

17 15. The information that Respondent gathered from B.H. in 1998 which was, in
18 part, the basis for Respondent's child custody evaluation to the court dated August 14, 1999,
19 consisted of confidential information which was not to be disclosed without the written consent of
20 H.B. Respondent was not permitted by law, and she did not have a valid purpose, for disclosing the
21 confidential information in her evaluation report to the court without her patient's written consent.

22 16. Prior to submitting her child custody evaluation to the court, Respondent had
23 not obtained a written release from B.H. which stated that B.H. had provided informed consent for
24 Respondent to disclose confidential information.

25 17. Respondent disclosure of B.H.'s confidential information to the court in
26 Respondent's child custody evaluation dated August 14, 1999, without H.B.'s written consent,
27 constitutes unprofessional conduct and gross negligence within the meaning of section 2960(j) of
28 the Code.

SECOND CAUSE FOR DISCIPLINE
(Unauthorized Communication of Information)
[Bus. & Prof. Code § 2960(h)]

18. Complainant incorporates by reference paragraphs 9-16 above, as if fully set forth at this point.

19. Respondent's disclosure of B.H.'s confidential information to the court in Respondent's child custody evaluation dated August 14, 1999, without H.B.'s written consent, constitutes unprofessional conduct and unauthorized communication of information received in professional confidence within the meaning of section 2960(h) of the Code.

THIRD CAUSE FOR DISCIPLINE
(Gross Negligence)
[Bus. & Prof. Code § 2960(j)]

20. Respondent is subject to disciplinary action under section 2960(j) of the Code in that she was grossly negligent in engaging in the dual relationship of therapist and evaluator with patient B.H., as more particularly described hereinbelow.

21. Complainant realleges paragraphs 9 through 12 above, as if fully set forth herein.

22. The Ethical Principles of Psychologists and the Code of Conduct promulgated by the American Psychological Association provides, in part, the following:

7.03 Clarification of Role -- In most circumstances, psychologists avoid performing multiple and potentially conflicting roles in forensic matters. When psychologists may be called on to serve in more than one role in a legal proceeding - for example, as consultant or expert for one party or for the court and as a fact witness - they clarify role expectations and the extent of confidentiality in advance to the extent feasible, and thereafter as changes occur, in order to avoid compromising their professional judgment and objectivity and in order to avoid misleading others regarding their role.

23. Respondent's role with B.H and her son began as a therapist and ended as an evaluator. This shift took place in two phases, the first of which was prompted by the parents' attorneys requesting that Respondent write the court on a visitation issue as described in Ms. Armstrong-Dixon's letter to Respondent in September 1998. Respondent's one page letter to the court dated December 2, 1998, which addressed the visitation issue, should have ended any

1 further involvement by Respondent in a dual relationship of therapist and evaluator for B.H., R.H.
2 and R.

3 24. Respondent's letter to the court eight months later, dated August 14, 1999,
4 concerning the evaluation of the parties and a custody recommendation was the second phase and
5 clearly went beyond what the parties had initially requested of Respondent and was without B.H.'s
6 informed consent. In that report, Respondent clearly took on the role of therapist and evaluator. An
7 evaluator in this setting is, in essence, an expert witness who is expected to report her findings to
8 third parties such as the court. This requires disclosing confidential information the patient has
9 shared with the therapist. It may also require, as in this case, that the therapist, in her role as
10 evaluator, inform the court of information and the evaluator's opinions that may be detrimental to
11 the patient's legal case as it was in this case. In Respondent's report to the court, Respondent
12 recommends that B.H. be sanctioned for moving to Fresno, California, and that she be required to
13 return to the area. Respondent also recommended that physical custody of the child be changed from
14 the mother to the father. Respondent's August 14, 1999 report to the court was initiated at the
15 request of R.H. only and paid for by R.H. It was also prepared and sent to the court without
16 necessity as there was no court order pending for such an evaluation and another psychologist could
17 have performed the evaluation rather than Respondent to avoid the dual relationship conflict.
18 Respondent compromised her professional judgment and objectivity in her role as therapist to B.H.
19 and R. when she took on the additional role of evaluator without sufficient cause and sent to the
20 court her August 14, 1999, report without first obtaining B.H.'s consent to the dual relationship and
21 waiver of the confidential information that B.H. had provided Respondent.

22 25. Respondent's taking on the dual relationship of therapist and evaluator for
23 B.H. when Respondent sent the court her child custody evaluation report dated August 14, 1999,
24 constitutes unprofessional conduct and gross negligence within the meaning of 2960(j) of the Code.

25 **FOURTH CAUSE FOR DISCIPLINE**

26 (Gross Negligence)

27 [Bus. & Prof. Code § 2960(j)]

28 26. Respondent is subject to disciplinary action under section 2960(j) of the Code
in that she was grossly negligent in failing to obtain informed consent from patient B.H. before

1 engaging in the dual relationship of therapist and evaluator with patient B.H., as more particularly
2 described hereinbelow.

3 27. Complainant realleges paragraphs 9 through 12, and 21 through 23, above,
4 as if fully set forth herein.

5 28. Respondent's failure to clarify to B.H. the extent to which confidentiality
6 could be compromised if Respondent was to assume the dual role of therapist and evaluator for the
7 court, and how the role of therapist would change if Respondent took on the role of evaluator for the
8 court, constitutes unprofessional conduct and gross negligence within the meaning of 2960(j) of the
9 Code.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 (Violations of Code of Conduct)

12 [Bus. & Prof. Code § 2960(i) and (k) and 2936]

13 29. Respondent is guilty of unprofessional conduct within the meaning of section
14 2960(i) and (k) and section 2936 of the Code as more particularly set forth hereinbelow.

15 30. Complainant realleges paragraphs 9 through 12, and 21 through 23 above,
16 as if fully set forth at this point.

17 31. Respondent's disclosing to the court in her child custody evaluation report
18 dated August 14, 1999, confidential information about H.B. without H.B.'s written consent
19 constitutes unprofessional conduct within the meaning of sections 2960(i), 2960 (k), and 2936 of the
20 Code.

21 **SIXTH CAUSE FOR DISCIPLINE**

22 (Violations of Code of Conduct)

23 [Bus. & Prof. Code § 2960(i) and (k) and 2936]

24 32. Respondent is guilty of unprofessional conduct within the meaning of section
25 2960(i) and (k) and section 2936 of the Code as more particularly set forth hereinbelow.

26 33. Complainant realleges paragraphs 9 through 12 and 21 through 23 above, as
27 if fully set forth at this point.

28 34. Respondent's failure to clarify to B.H. the extent to which confidentiality
could be compromised if Respondent was to assume the dual role of therapist and evaluator for the
court, and how the role of therapist would change if Respondent took on the role of evaluator,

1 constitutes unprofessional conduct within the meaning of sections 2960(i), 2960 (k), and 2936 of the
2 Code.

3
4 PRAYER


5 WHEREFORE, Complainant requests that a hearing be held on the matters herein
6 alleged, and that following the hearing, the Board of Psychology issue a decision:

7 1. Revoking or suspending Psychologist License Number PSY9078, issued to
8 ARLENE SONDR A GIORDANO;

9 2. Ordering ARLENE SONDR A GIORDANO to pay the Board of Psychology
10 the reasonable costs of the investigation and enforcement of this case, and, if placed on probation,
11 the costs of probation monitoring;

12 3. Taking such other and further action as deemed necessary and proper.

13
14 DATED: 12-5-2002.

15
16 
17 THOMAS S. O'CONNOR
18 Executive Officer
19 Board of Psychology
20 Department of Consumer Affairs
21 State of California
22 Complainant
23
24
25
26
27
28

DECLARATION OF SERVICE BY CERTIFIED MAIL

In the Matter of the Accusation Filed
Against:

Arlene Sondra Giordano, Ph.D.

No. : W231

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is 1422 Howe Avenue, Ste. 22 Sacramento, California 95825. I served a true copy of the attached:

DECISION AND ORDER

by mail on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

NAME AND ADDRESS

CERT NO.

Arlene Sondra Giordano, Ph.D.
137 S. Shepard Street
Sonora, CA 95370

7001 1940 0001 2974 8122


Mathew Cheever, Esq.
Nossman, Guthrie, Knox & Elliott, LLP
915 L Street, Suite 1000
Sacramento, CA 95814-3701

Daniel J. Turner
Deputy Attorney General
1300 I Street, Suite 125
Sacramento, CA 95814

Each said envelope was then on, February 10, 2003, sealed and deposited in the United States mail at Sacramento, California, the county in which I am employed, as certified mail, with the postage thereon fully prepaid, and return receipt requested.

Executed on, February 10, 2003, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


DECLARANT
Mary Laackmann
Enforcement Analyst